

### REMARKS

The Office Action of July 9, 2009 presents the examination of claims 1-15 and 19-30. Claims 16-18 were canceled previously. Claim 30 is indicated as allowed.

#### Amendments to claims and specification

This paper cancels claims 1-15, 19-28 and 30. New claim 31, directed to a pharmaceutical composition including the compound of claim 29 or its salt, is added.

The specification is amended to correct typographical errors inadvertently introduced into the text during preparation of the application. The nature of the error and its correction are readily ascertained from the named object compound and the accompanying structure above the text to be corrected. Thus, no new matter is added by this amendment.

#### Errors noted in publication

It has come to Applicants' attention that the U.S. Patent Publication document (US 2007/0190071) for this application contains errors.

Specifically, the structures depicted at page 59 for the compounds in Example 2-37 and shown in paragraphs [0516] and [0518] incorrectly show a butylene linking group. This portion of the structure should be a propylene linking group.

The Office has introduced the error during their printing of the publication. Please note pages 124-125 of the English specification as filed on December 4, 2006. As the error was noted more than two months after publication, Applicants understand that the Publication document cannot be corrected. The Examiner's assistance in preventing the error in the published U.S. Patent is appreciated.

#### Objections and statutory rejections

Claim 22 is rejected under 35 USC § 102(b) as anticipated by Dvorakova or Chavarot or Itahara or Spasova. Claims 1-15 and 19-24 are rejected under 35 USC § 112, second paragraph, as allegedly being indefinite in the recitation "cyclic amino". The Examiner also asserts that the structure of "C<sub>2</sub>-C<sub>10</sub> acyloxy" is unclear. Claims 19 and 20 are rejected under 35 USC § 112, first paragraph, for alleged lack of enablement of the full scope of the diseases to be treated.

Claims 13 and 14 are objected to as duplicative of claim 12. Claims 22 and 24 are objected to as falling outside the scope of claim 1 from which they depend.

All of the claims subject to rejection or objection as explained above are canceled, rendering the rejections and objections moot. Applicants do not particularly agree with the Examiner's positions on these issues, and reserve the right to file one or more applications pursuant to 35 USC § 120 that are directed to the subject matter canceled from this application.

Obviousness-type double patenting

Claims 1-15 and 19-29 are rejected under the judicially-created doctrine of obviousness-type double patenting over claims 1-12 and 17-19 of copending application 12066952. This rejection is respectfully traversed. Reconsideration and withdrawal thereof are requested.

Applicants submit that the subject matter of the presently remaining claims 29 and 31 is patentably distinct from that encompassed by claims 1-12 and 17-19 of the '952 application. In particular,  $N-R^3$  in formula (1) of claim 1 of the '952 application corresponds to  $X^2 = NR^5$  of the present application. In the '952 application  $R^3$  is  $-(CH_2)_m-NR^4R^5$ , wherein  $R^4$  and  $R^5$  each independently represent hydrogen or  $C_1$ - $C_6$  alkyl, or  $R^4$  and  $R^5$  together with the nitrogen atom to which they are attached form a 3- to 8-membered saturated heterocyclic ring optionally comprising a further ring heterogroup  $NR^6$ . Such a structure for  $NR^4R^5$  does not include a morpholino group as in the present claim 29. Thus, claim 29 is not overlapped by any claim of the '952 application and furthermore is patentably distinct from any claim of the '952 application.


Applicants submit that the present claims are free of the rejections of record and are patentable. The favorable action of allowance of pending claims 29 and 31 is respectfully requested.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Mark J. Nuell, Ph.D. (Reg. No. 36,623) at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.14; particularly, extension of time fees.

Dated: October 6, 2009

Respectfully submitted,

By 

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